

O.J. no. 148 of 29 June 1999 page 9487

Act no 99-532 of 25 June 1999 relating to savings and financial security (extract)

TITLE IV

PROVISIONS RELATING TO THE REFORM OF *SOCIÉTÉS DE CRÉDIT FONCIER* ("MORTGAGE CREDIT COMPANIES")

Chapter 1

Status of mortgage credit companies

Article 93

Mortgage credit companies are credit institutions approved as financial companies by the Committee on credit institutions and investment companies, whose exclusive purpose is:

- 1° To grant or acquire the secured loans, loans to public persons and securities, mentioned in Article 94.
- 2° For the financing of these categories of loans or stocks and debt securities, to issue bonds known as *obligations foncières* ("mortgage bonds") benefiting from the preferential right defined in Article 98 and to gather other resources, the issue or subscription contract for which refers to this preferential right.

Mortgage credit companies may also provide financing for the activities mentioned above by issuing loans or resources which do not benefit from this preferential right. They may not issue promissory notes referred to in Article 16 of Act No 69-1263 of 31 December 1969 containing various economic and financial provisions.

Notwithstanding all provisions or stipulations to the contrary, mortgage credit companies may, in accordance with Act No 81-1 of 2 January 1982 facilitating credit to companies, realise all the claims they hold, irrespective of the nature, professional or otherwise, of these claims. In this case, the lists given in the statement referred to in Article 1 of the aforementioned Act No 81-1 of 2 January 1981 are determined by decree. Claims realised in this way are not booked by these companies under Article 96.

Mortgage credit companies may acquire and possess all real estate or moveable property necessary to fulfil their purpose or resulting from the recovery of their claims.

Article 94

I. – Secured loans are loans accompanied by:

- 1° A first-rank mortgage or a real estate security providing at least an equivalent guarantee;
- 2° Or, within the limits and conditions determined by decree in the State Council, imposing in particular a minimum personal contribution on the part of the borrower and compliance with a proportion of the value of the property financed and subject to the secured loan being allocated exclusively to the financing of real estate, a surety from a credit institution or an insurance company which is not part of the consolidation structure defined in Article 357-1 of Act No 66-537 of 24 July 1966 on trading companies under which the mortgage credit company comes.

Loans secured by a real estate surety mentioned in 1° above may not exceed a proportion of the value of the property to which the guarantee relates. This proportion is set in the conditions determined by decree in the State Council. However, it may be exceeded when these loans benefit from the guarantee of the *Fonds de garantie de l'accession sociale* (FGAS), designed to assist access to ownership, referred to in Article L. 312-1 of the construction and housing code or when the share of

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these loans exceeding the proportion set and within the limit of the value of the property to which the guarantee relates, is covered by a surety which fulfils the conditions referred to in 2° above or by a guarantee provided by one or more public legal entities referred to in II.

If necessary, this proportion may be exceeded when the share of these loans exceeding the proportion set and within a limit determined by decree in the Council of State is covered by the non-preferential resources referred to in the fourth paragraph of Article 93.

The property provided as a guarantee or the property financed by a secured loan must be located within the European Economic Area or the overseas territories of the Republic of France. Its value is determined on a cautious basis, excluding any speculative elements. The evaluation procedures are set by a regulation of the *Comité de la Réglementation bancaire et financière* – the banking and finance regulations committee - which stipulates in particular the cases in which an expert appraisal is required.

II. – Loans to public persons are loans granted to States, to territorial authorities or their groupings and to public institutions belonging to the European Economic Area, or guaranteed in full by one or more States or territorial authorities or groupings thereof.

III. – Shares in *fonds communs de créances* (FFC) (“mutual claims funds”) governed by Act No 88-1201 of 23 December 1988 on undertakings for collective investment in transferable securities and relating to the creation of FFC as well as shares or debt securities issued by similar entities which are subject to the law of a State belonging to the European Economic Area are given the same status as the loans referred to in I and II, provided that at least 90% of the assets of these FFC or similar entities consist of claims of the same type as the loans having the characteristics defined in the first three paragraphs of I as well as II, and to the exclusion of specific shares bearing the risk of default on the part of the debtors concerned.

IV. – Mortgage credit companies may not hold participating interests. A State Council decree determines the conditions under which stocks and debt securities, including the *obligations foncières* issued by other mortgage credit companies, are sufficiently safe and liquid to be held as replacement securities by mortgage credit companies. This decree sets the maximum share which these replacement securities may represent in the assets of these companies.

Article 95

In order to provide cover for management transactions involving the loans referred to in Article 94, *obligations foncières* or other resources benefiting from a preferential right defined in Article 98, mortgage credit companies may have recourse to forward financial instruments as defined in Article 3 of Act N° 96-597 of 2 July 1996 on the modernisation of financial activities. The sums due in respect of these forward financial instruments, if appropriate after clearing, benefit from the preferential right referred to in Article 98.

The sums due in respect of forward financial instruments used to cover the transactions referred to in the fourth paragraph of Article 93 do not benefit from this preferential right.

Article 96

The total amount of the assets of mortgage credit companies must be higher than the total liabilities benefiting from the preferential right referred to in Article 98. The *Comité de la Réglementation bancaire et financière* – the banking and finance regulations committee - determines the valuation procedure applied to these element of the assets and liabilities.

Article 97

Article L. 312-21 of the consumer code is supplemented by a paragraph which reads as follows:

“For contracts concluded as of the date on which Act No 99-532 of 25 June 1999 relating to savings and financial security enters into force, no compensation is due by the borrower in the event of advance repayment when the repayment is due to the sale of the real estate further to a change in the place of the professional activity of the borrower or his or her spouse, or the death or compulsory cessation of the professional activity of the latter.”

Article 98

Notwithstanding all legislative provisions to the contrary, and in particular those contained in Act No 84-148 of 1 March 1984 relating to the prevention and out-of-court settlement of companies' difficulties and Act No 85-98 of 25 January 1985 relating to the compulsory administration and liquidation subject to court supervision of companies:

1° sums from loans, stocks and debt securities referred to in Article 94 and financial instruments referred to in Article 95, if appropriate after clearing, as well as claims resulting from deposits made by the mortgage credit company with credit institutions, are allocated by priority to servicing payment of bonds and other preferential resources referred to in Article 93, 2°.

2° When a mortgage credit company is the object of compulsory administration or liquidation subject to court supervision, or an out-of-court settlement, claims duly arising out of transactions referred to in Article 93, 2° are paid upon their contractual maturity and have priority over all other claims, whether or not these are accompanied by preferential rights or sureties, including the interest resulting from contracts, irrespective of the duration. No other creditor of the mortgage credit company may exercise any right over the property and rights of this company until the holders of preferential claims within the meaning of this article have been paid in full.

3° The liquidation of a mortgage credit company subject to court supervision does not render bonds and other debts benefiting from the preferential right referred to in 1° of this article payable.

The rules defined in 1° and 2° above apply to the costs related to the transactions referred to in Article 93, 1° and 2° and to the sums due, if appropriate, in respect of the contract provided for in Article 99.

Article 99

The management or recovery of loans, bonds or other resources provided for in Article 93 can only be undertaken by a credit institution linked to it by contract.

Article 100

The credit institution responsible for managing the loans is empowered to act before the courts, both as the plaintiff and as the defendant, and to exercise all means of execution in the name and on behalf of the mortgage credit company.

Article 101

The provisions of Article 108 of the aforementioned Act No 85-98 of 25 January 1985 do not apply to contracts concluded by or with a mortgage credit company, or to legal acts undertaken by a mortgage credit company or for its benefit, if these contracts or acts relate directly to the transactions provided for under Article 93.

Article 102

When a temporary administrator or a liquidator has been appointed to a mortgage credit company, in accordance with Articles 44 and 46 of Act No 84-46 of 24 January 1984 on the activity and supervision of credit institutions, the provisions of Article 46-1 of this same act apply.

Article 103

Notwithstanding all provisions to the contrary, and in particular those of the aforementioned Act No 85-98 of 25 January 1985, the compulsory administration or liquidation subject to court supervision of a company holding shares in a mortgage credit company may not be extended to the mortgage credit company.

Article 104

In the event of the compulsory administration or liquidation subject to court supervision of a company responsible for the management or recovery, on behalf of a mortgage credit company, of loans, bonds or other resources referred to in Article 93, the contracts providing for this management or recovery may be terminated immediately, notwithstanding all provisions to the contrary and in particular those of the aforementioned Act No 85-98 of 25 January 1985.

Article 105

The transfer to a mortgage credit company of the loans referred to in Article 93 is undertaken by handing over a *bordereau* ("statement") to the transferee, the details of which are determined by decree. The transfer or contribution takes effect between the parties and becomes enforceable upon third parties on the date affixed on the statement when it is handed over. The handing over of the statement automatically entails the transfer of ancillary elements related to the claims transferred and sureties guaranteeing each loan, including mortgage sureties as well as its enforceability upon third parties, without other formalities being necessary.

Article 106

In event of a change in the legal entity responsible for managing or recovering loans, the debtors are informed of this by ordinary mail.

Article 107

The Banking Commission ensures that mortgage credit companies comply with the obligations incumbent upon them in application of this title and impose penalties for shortcomings observed under the conditions laid down in Articles 37 to 49 of Act No 84-46 of 24 January 1984.

In each mortgage credit company, a *contrôleur spécifique* (specific inspector) and a deputy specific inspector chosen from among the persons included on the list of auditors are appointed for a period of four years by the managers of the company, on the recommendation of the Banking Commission.

The deputy specific inspector is called upon to replace the holder of this position in the event of refusal, impediment, resignation or death. His duties terminate on the day on which the mandate conferred upon the latter expires, unless the impediment is of a temporary nature. In this case, when the impediment has ceased to exist, the holder resumes his duties once the report provided for in the sixth paragraph of this article has been drafted.

The auditor of the mortgage company, the auditor of any controlling company within the meaning of Article 355-I of the aforementioned Act No 66-537 of 24 July 1966, the mortgage credit company or the auditor of a company directly or indirectly controlled by a company controlling the mortgage credit company may not be appointed as specific inspector or deputy specific inspector.

The inspector ensures that the company complies with Articles 93, 94, 95, 96 and 98. He checks that the assets brought in to a mortgage credit company comply with the purpose defined in Article 93 and fulfil the conditions laid down in Article 94.

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The inspector checks the documents addressed to the Banking Commission in respect of compliance with the above provisions. He draws up an annual report on the fulfilment of his assignment intended for the managers and deliberating bodies of the company and a copy of which is sent to the Banking Commission.

He attends all shareholders' meetings and is heard at his request by the Board of Directors or the management committee.

The inspector, as well as his colleagues and experts, is bound by an obligation to maintain professional secrecy in respect of the facts, acts and information which may come to his knowledge by reason of his duties. However, he is released from the obligation to maintain professional secrecy with regard to the Banking Commission which he is obliged to inform immediately of any act or decision which comes to his knowledge during the fulfilment of his assignment and which is likely to adversely affect the conditions or the operating continuity of the mortgage credit company. He reveals criminal acts which come to his knowledge to the public prosecutor, without this revelation incurring his liability.

He is liable, both as regard the company and as regards third parties, for the harmful consequences of errors and negligence committed by him in the exercising of his duties.

When the mortgage credit company is the object of compulsory administration or liquidation subject to court supervision, the specific inspector makes the declaration provided for in Article 50 of the aforementioned Act No 85-98 of 25 January 1985 in the name and on behalf of the holders of claims benefiting from the preferential right defined in Article 98.

The provisions of Articles 219-3, 220 to 221-1, 227, 229, 232, 235 and 455 to 458 of the aforementioned Act No 66-537 of 24 July 1966 and Article 53-1 of the aforementioned Act No 84-46 of 24 January 1984 apply to the inspector. The Banking Commission can take the action provided for in Article 227 of the aforementioned Act No 66-537 of 24 July 1966.

Notwithstanding the provisions of the last paragraph of Article 229 of the aforementioned Act No 66-537 of 24 July 1966, the right of information of the inspector may extend to the forwarding of papers, contracts and documents held by the company responsible for managing and recovering the loans, bonds and other resources, in application of Article 99, provided that these papers, contracts and documents relate directly to transactions effected by this company on behalf of the mortgage credit company.

Article 108

Article 260 C of the general tax code is supplemented by point 13° which reads as follows:

«13° To sums collected upon the transfer of claims to mortgage credit companies or in return for the management of these claims.»

Article 109

The terms and conditions of application of this chapter are defined by decree in the State Council.

Chapter II

Various and transitional measures

Article 110

Within a period of six months of the publication of this act, the *Crédit Foncier de France* and the *Crédit foncier et communal d'Alsace et de Lorraine* transfer to a subsidiary with the status of a mortgage credit company the contracts relating to the issuing of *obligations foncières*, communal bonds and ship mortgages bonds and loan contracts as well as the other assets allocated to these bonds by preference, concluded or acquired prior to this date, in accordance with the special legislative and regulatory provisions which were applicable to them, as well as the other resources which contribute towards financing these loans. The transfer of these elements of the assets and liabilities automatically bears with it the effects of a universal transfer of assets, without the need for any formalities. Until this transfer is effected in full, their activity continues to be governed by these provisions.

Loans falling under the first paragraph are placed in the same category as the loans referred to in Article 94.

The transfer of assets and liabilities automatically, without any formalities, entails the transfer of ancillary elements relating to the transferred claims and real and personal sureties guaranteeing each loan and each element of the liabilities, including mortgage sureties.

The transfer of the rights and obligations resulting from contracts relating to the issue of the bonds referred to in the first paragraph or the rights and obligations resulting from contracts relating to the resources contributing towards the financing of the loans referred to in the same paragraph do not provide the right to advance repayment or a modification of any of the terms of the agreement used as a basis. As soon as the transfer is effected, the transferee is subrogated in the rights and obligations of the transferor.

The transfer of assets and liabilities bears with it the transfer to the same transferee of the forward financial instruments concluded to cover them, for the management or cover of the global risk on the assets, the liabilities and the off-balance sheet items of the transferor, as well as the transfer of sureties, guarantees and other ancillary elements relating to these instruments, without the contracting parties being entitled to advance repayment or a modification of any of the terms of the agreements used as a basis.

The counterparts to contracts relating to financial instruments concluded with the *Crédit Foncier de France* and the *Crédit foncier et communal d'Alsace et de Lorraine*, as well as holders of bonds and resources issued by these companies or benefiting from the guarantee provided by them, which are not transferred in application of the provisions of this article, have no right to any advance repayment or termination or the modification of any of the terms in the contract, simply owing to the transfers provided for in this article.

Until the transfer provided for in the first paragraph has been completed in full, the bonds and other resources referred to in this paragraph and to which applies the preferential right instituted by the decree of 28 February 1852 on mortgage credit companies and by Article 82 of Act No 47-1465 of 8 August 1947 relating to certain financial provisions continue to benefit from this preferential right. As soon as they are transferred, these preferential bonds and other resources as well as the sums due in respect of the forward financing instruments referred to in the fifth paragraph automatically benefit from the preferential right referred to in Article 98.

The provisions of this article apply notwithstanding any provisions or stipulations to the contrary.

Article 111

The following are repealed:

- the decree of 28 February 1852 on mortgage credit companies
- the decree of 28 March 1852 authorising the creation of a mortgage credit company for the legal district of the court of appeal in Paris.
- the decree of 18 October 1852 relating to public administration regulations on the supervision of mortgage credit companies, amended by the decree of 17 August 1911;
- the imperial decree of 10 December 1852 approving the agreement concluded on 18 November 1852 between the minister of the interior, agriculture and trade and the *Banque Foncière de Paris*, mortgage credit company;
- the act of 10 June 1853 relating to mortgage credit companies;
- the decree of 26 June 1854 placing mortgage credit companies among the areas assigned to the finance minister;
- the decree of 6 July 1854 on the organisation of the *Crédit Foncier de France*;
- the act of 26 February 1862 relative to loans to be made by the departments, the communes, the hospices and other institutions;
- the act of the Empire of 13 July 1899 on mortgage banks, extended by Article 5 of the act of 1 June 1924 introducing French trading laws in the departments of Haut-Rhin, Bas-Rhin and Moselle;
- the act of 18 April 1922 the purpose of which is to amend the articles of association of the *Crédit Foncier de France*;
- the act of 24 November 1940 amending the articles of association of the *Crédit Foncier de France*;
- Article 82 of Act No 47 –1465 of 8 August 1947 on certain financial provisions;
- Article 29 of Act No 53-1336 of 31 December 1953 relating to the special accounts of the Treasury for the year 1954;
- Article L. 311-9 of the construction and housing code.

Article 112

Within a period of six months as of the date of publication of this act, the extraordinary general meetings shall bring the articles of association of the *Crédit Foncier de France* and the *Crédit foncier et communal d'Alsace et de Lorraine* into line with the provisions of this title. Until this is effected, the previous articles of association remain in force.

Article 113

Article 16 of Act No 69-1263 of 31 December 1969 relating to various economic and financial provisions is amended as follows:

1° Point I reads as follows:

«I. The provisions of this article apply to promissory notes issued by credit institutions to realise long-term claims intended to finance real estate located in the European Economic Area or the overseas territories of the Republic and guaranteed:

- by a first-ranking mortgage or a real estate surety providing at least an equivalent guarantee;
- or a guarantee granted by a credit institution or an insurance company which is not part of the consolidation structure defined in Article 357-I of Act No 66-537 of 24 July 1966 on trading companies to which the credit institution having issued the promissory note belongs.

Shares in FCC governed by Act No 88-1201 of 23 December 1988 on undertakings for collective investment in transferable securities and relating to the creation of FCC are placed in the same category as the claims referred to above, provided that at least 90% of the assets of these FCC consist of claims of the same type, to the exclusion of specific shares bearing the risk of default on the part of the debtors concerned.

As of 1 January 2002, the claims realised by promissory notes must comply with the conditions laid down in Article 94, I, of Act No 99-532 of 25 June 1999 on savings and financial security in accordance with the terms and conditions determined by a State Council decree. This decree stipulates the

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conditions in which the proportion may be exceeded if the amount of said claims exceeds that of the promissory notes they guarantee.»

2° The final paragraph of IV reads as follows:

«While the promissory note is made available to the bearer, the lending body may not transmit these claims or instruments in any form whatsoever.»

3° In V, the words “*matérielle des titres créances*” (“material of claim securities”) are replaced by the words “*de la liste nominative prévue au II ci-dessus*” (“of the nominative list provided for in II above”);

4° The following have been deleted:

- in the first paragraph of III, the word ‘mortgage’
- in II and VI *bis*, the words ‘mortgage and other’.

5° VII reads as follows:

«VII. The provisions III, IV and V of this article are applicable notwithstanding all provisions to the contrary, and in particular those of Act No 84-148 of 1 March 1984 relating to the prevention and out-of-court settlement of companies’ difficulties and Act No 85-98 of 25 January 1985 relating to the compulsory administration and liquidation subject to court supervision of companies. These provisions are applicable to claims realised before the publication of the aforementioned Act No 99-532 of 25 June 1999 in application of the provisions of this article.»

6° VIII reads as follows:

«VIII. – The Banking Commission is responsible for ensuring that credit institutions comply with the provisions of this article.

Article 114

The second paragraph of Article 48 of the aforementioned Act No 84-148 of 1 March 1984 is supplemented by a sentence that reads as follows:

«Payments made by the main debtor are deemed, in relations between the surety and the institution, to be allocated primarily to the settlement of the principal of the debt.»

Article 115

I. – After Article L. 312-14 of the consumer code, an Article L. 312-14-I is inserted, which reads as follows:

«Article L. 312-14-1. If the loan is renegotiated, the modifications to the initial loan contract are made in the form of an additional clause only. This additional clause shall comprise a schedule of payments giving details for each due date of the capital outstanding in the event of advance repayment and the actual overall rate as well as the cost of the credit calculated on the basis of the due dates and costs to come only. For variable rate loans, the additional clause includes the actual overall rate as well as the cost of the credit calculated on the basis of the due dates and costs to come only until the date of the rate revision, as well as the terms and conditions governing variations in the rate. The borrower has a ten-day reflection period as of receipt of the information given above.»

II. – Subject to court decisions adopted on a *res judicata* basis (“which have acquired the force of law”), loan renegotiations prior to the publication of this act are deemed to be regular in respect of the ninth paragraph of Article L. 312-8 of the consumer code, as long as they are favourable to borrowers, that is that they result either in a fall in the rate of interest on the loan or in a fall in the amount of the due dates of the loan or in a fall in the duration of the loan.

Article 116

Article 285 of the aforementioned Act No 66-537 of 24 July 1966 is not applicable to mortgage credit companies.